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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

In re D.W., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

D.W.,

Defendant and Appellant.

A141746

(San Francisco City and County
Super. Ct. No. JW136122)

INTRODUCTION

In this case, appellate counsel has made an independent review of the proceedings below and concluded the record reflects no meritorious claims for appeal. He has advised appellant of his conclusions and told the minor he may file a supplemental brief raising issues appellant believes merit our review. Appellant has not filed any such pleadings. Pursuant to *People v. Kelly* (2006) 40 Cal.4th 106, 119, counsel asks this court to conduct a review of the record. This appeal is authorized by Welfare and Institutions Code section 800. We have completed our review and find no issues meriting further appellate consideration.

STATEMENT OF THE CASE

On September 4, 2013, the District Attorney of San Francisco filed a juvenile wardship petition pursuant to Welfare and Institutions Code section 602, subdivision (a). The petition charged appellant with several felonies: first degree robbery (Pen. Code §212.5, subd. (a); count one) and assault by means of force likely to cause great bodily

injury (Pen. Code § 245, subd. (a)(4); count two). The petition also alleged appellant inflicted great bodily injury during the commission of both offenses. (Pen. Code, § 12022.7, subd. (a).)

On September 5, 2013, the minor was arraigned and denied the allegations in the petition. On September 20 and 23, 2013, the court conducted the jurisdictional hearing. The victim and certain police officers testified. The district attorney also presented a videotape of the offense, photos of the injuries to the victim, and medical records. These items were all received in evidence. At the completion of the hearing, the trial court concluded the prosecution had established its case beyond a reasonable doubt and found the charges and allegations proven. The court advised appellant the maximum confinement time for these offenses was 10 years and two months in custody.

The disposition hearing was held on October 7, 2013. The trial court granted a motion to strike the enhancement – Penal Code section 12022.7, subdivision (a) – as to count two. Also, at this hearing, appellant admitted to an allegation of misdemeanor theft (Pen. Code, § 484, subd. (a)) from a separate petition for which the minor was on informal probation. Appellant was sentenced to formal probation and committed to Log Cabin Ranch.

On October 15, 2013, counsel for appellant moved to reduce the felony assault conviction to a misdemeanor pursuant to Penal Code section 17, subdivision (b) (section 17(b) motion). The court denied this motion.

On October 22, 2013, minor filed an appeal of the trial court findings in his case and the denial of his section 17(b) motion.¹

¹ On March 19, 2014, minor filed a Petition for Writ of Habeas Corpus (Case No., 141303) based on ineffective assistance of counsel. We issued an order to show cause on the petition and remanded the case to the trial court for a decision on the ineffective assistance issue. That is a separate matter.

The Log Cabin Ranch progress reports reflect the minor had complied with the program directives and received promotions. He has adapted well, is polite, and well behaved. On March 3, 2014, new counsel for appellant petitioned for modification of minor's sentence pursuant to Welfare and Institutions Code section 778 (section 778). Counsel sought to end the Log Cabin Ranch commitment and establish out-of-home placement. Such placement would provide foster care benefits for appellant pursuant to Assembly Bill No. 12 (Stats. 2010, ch. 559, (AB-12)). The motion indicated minor had no parent or guardian he could live with once released from Log Cabin Ranch.

The district attorney objected to the motion, arguing there were no changed circumstances sufficient to warrant a modification in the minor's placement. The requested change was not in the best interests of the minor and was contrary to the purposes of AB-12.

The trial court denied the section 778 motion on April 24, 2014. The court concluded there were no changed circumstances meriting a grant of the section 778 motion and that AB-12 was not designed for subjects like appellant.

Minor filed this appeal after the denial on May 2, 2014.

STATEMENT OF FACTS

On August 30, 2013, the victim here was a passenger on a Muni bus in San Francisco. Appellant and other youths were also on the bus. The victim's iPhone was grabbed by one of the minors while the other held the arms of the victim and pulled him to the floor. The victim was then punched and jumped by the group. He was kicked several times in the head and upper torso. One of the attackers also took the victim's wallet containing \$20. A video camera recorded the entire assault. This tape was received in evidence by the court. One police officer identified appellant in the video. When apprehended by police, appellant admitted taking the wallet of the victim but denied any assault.

DISCUSSION

The facts are very straightforward here. The victim was assaulted by a group of youths for the purpose of taking his property. The episode was captured on video and, after reviewing the tape, the court sustained the charges beyond a reasonable doubt. The minor admitted to participation in the incident. The sentence imposed was within the discretion of the court. The judge's decision not to modify the sentence pursuant to section 778 was also within her authority. Indeed, she demonstrated considerable leniency when she sentenced appellant for felony assault as opposed to robbery.

DISPOSITION

Based on our review of the matter, we affirm.

Dondero, J.

We concur:

Humes, P.J.

Margulies, J.